IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

Crl.MC.No. 1482 of 2006()

CMP.133/2006 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONER:

MAJEENDRANATH SAIT @ MAHESH SAIT,
S/O.VITTOVA POWAR, AGED 46 YEARS,
BUSINESS, RESIDING AT PRIYANKA BHAVAN,
VENGARA, THIRURANGADI.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

RESPONDENTS:

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1. MUHAMMAD RAFI, S/O.MOITHEEN,
MANDAYAPURAM HOUSE, KOTTAKAL,
MALAPPURAM.

2. THE CIRCLE INSPECTOR OF POLICE,
MALAPPURAM.

3. THE SUB INSPECTOR OF POLICE,
VENGARA POLICE STATION, MALAPPURAM.

4. THE STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.TOMY JOHN VETTATH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/01/2007, ALONG WITH CRMC NO. 1483 OF 2006 & CRMC NO. 1703 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1482, 1483 AND 1703 of 2006

Dated this the 9th day of January, 2007

ORDER

These petitions are directed against a common order passed by the learned Magistrate refusing to release the properties/cash which were seized and produced in Crime No.345 of 2005 of Vengara Police Station.

2. The crux of the allegations is that at about 10 p.m on 13.12.2005, the victim (his wife is the defacto complainant), who is the petitioner in Crl.M.C.Nos.1482 & 1483 of 2006, was kidnapped by the accused persons including the petitioner in Crl.M.C No.1703 of 2006, who is the 1st accused. It is further alleged that after so kidnapping him, he was brought to his house and from there, 1.170 kg. of gold ornaments and cash of Rs.50,000/- were forcibly taken away. The victim was allegedly taken away from his house by the accused persons. There is a further allegation that subsequently the miscreants came to the house of the petitioner and the defacto complainant was compelled to part with gold ornaments weighing about 100 g. These incidents allegedly took place on the night of 13.05.2005. Crime was registered on the basis of the complaint of the defacto complainant/wife of the victim at 7.30 a.m on 14.12.2005. There is a further allegation that a ransom of Rs.5 lakhs was paid to

the 1st accused by the defacto complainant through others to secure the release of the victim. The police had registered the crime on the basis of the complaint of the defacto complainant. In the course of investigation, they have recovered 1.170 kg. of gold ornaments as also an amount of Rs.5,17,500/-. These were admittedly recovered from the possession of the 1st accused.

3. Rival contestants - the victim and the 1st accused staked claim before the learned Magistrate for release of the said amount of Rs.5,17,500/- and 1.170 kg. of gold ornaments which were produced in court. The learned Magistrate by the impugned order took the view that the articles need not be released to either of them and that they shall be retained in custody of the court until further orders.

4. Both the contestants have come before this Court aggrieved by the said impugned order passed by the learned Magistrate. Reliance is placed in the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** [A.I.R 2003 S.C 638] to contend that the learned Magistrate should not have unnecessarily insisted on retention of the cash and gold ornaments in the custody of the court pending disposal of the case. Both the 1st accused and the victim offer to produce bank guarantee for the value of the gold ornaments and cash as condition for release of the articles to them.

5. I have considered all the relevant inputs. Having considered all the relevant inputs, I am certainly of the opinion that the impugned order passed by the learned Magistrate does not warrant any interference. The learned Magistrate, according to me, is justified in the facts and circumstances of this case in not directing the release of the articles/cash to either of the two claimants. The decision in **Sunderbhai Ambalal Desai v. State of Gujarat** cannot be reckoned as stating an inflexible proposition that in all cases, the property produced must be released to the contestants or to any other third person. On the peculiar facts and circumstances of each case, the dictum in **Sunderbhai Ambalal Desai v. State of Gujarat** will have to be applied. In the instance case, so far as the gold ornaments are concerned, I am certainly of the opinion that it will be premature on the part of the court to come to any conclusion without any tangible evidence merely on probabilities. I am carefully avoiding any expression of opinion on merits about the acceptability of the rival claims. Suffice it to say that I have most anxiously considered the rival contentions on merits and perused the case diary. I am of the opinion that the course adopted by the court below of directing the retention of the gold ornaments in the custody of the court till disposal of the case does not suffer from any such vice which would justify invocation of the inherent jurisdiction of this Court under Section 482 Cr.P.C.

6. I do of course see the inequity which might result if the amount of Rs.1,17,500/- were to be directed to be kept in custody of the court without the same fetching any interest. Whoever succeeds ultimately would suffer on account of such retention of the cash in custody of the court without the same fetching any interest. I am satisfied that the learned Magistrate can be directed to retain the amount in deposit with any nationalised bank for a period of one year such that the principal amount along with the interest shall be payable to the court after such period of one year. If necessary, the deposit shall be renewed. At the end of trial, appropriate direction regarding release of the amount shall be made. It is submitted that the charge sheet has already been filed. I am satisfied that the learned Magistrate must be directed to dispose of the case as expeditiously as possible.

7. With the above observations, these Crl.M.Cs are, dismissed.

(R.BASANT, JUDGE)

rtr/-